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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,215	02/17/2004	Ray L. Westfall	2004-101A	1931

38382 7590 05/20/2005

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EXAMINER

PAYER, HWEI SIU CHOU

ART UNIT PAPER NUMBER

3724

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/781,215

Applicant(s)

WESTFALL, RAY L.

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-11 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 19-21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 9 is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## Detailed Action

The amendment filed on 5-10-2005 has been entered. It is noted the withdrawn claims 10, 11 and 19-21 depend from canceled claims.

### Claim Rejection - 35 U.S.C. 112, first paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claimed fork end tapering into a shaft has no support from the original specification.

### Claims Rejection - 35 U.S.C. 102(b)

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Smith (U.S. Patent No. 1,809,254).

Smith discloses a cooking implement (see page 1, lines 1-3) comprising a hollow sheath (10) closed at a first end and having an opposite female end; a utensil comprising a fork end (1,1) for interacting with a food item, the fork end (1,1) tapering into a shaft (3,3), the shaft (3,3) embedded into a male portion (9) opposite the fork end (1,1), the male portion (9) of the utensil being insertable into the female end of the sheath (10); and whereupon joining the male portion (9) and the female end, the sheath (10) forming a handle, the sheath (12) being sufficiently elongate to allow a user to safely manipulate food items being coked in an environment of heat and flames as claimed.

#### **Claims Rejection - 35 U.S.C. 103(a)**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent No. 1,809,254) in view of Harmon et al. (U.S. Patent No. 6,877,232).

Smith's cooking implement as set forth shows all the claimed structure except the sheath (10) and the male portion (9) are not made of heat resistant plastic.

Harmon et al. show a cooking implement comprising handle (7) made of heat resistant plastic (see column 4, lines 50-63).

It would have been obvious to one skilled in the art to modify Smith by making the sheath (10) and the male portion (9) out of heat resistant plastic to prevent a user's hand holding the cooking implement from getting burned as taught by Harmon et al.

#### **Indication of Allowable Subject Matter**

Claims 8 and 9 are allowed.

#### **Action Made Final**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### **Point of Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 571-272-4511. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 571-273-4511 for proposed amendments.

H Payer  
May 16, 2005

*18-2 Payer*